

ORIGINAL

Pro Se 1 (Rev. 12/16) Complaint for a Civil Case

UNITED STATES DISTRICT COURT

for the

Eastern District of New York



____ Civil ____ Division

Olga K. Davila

Case No.

(to be filled in by the Clerk's Office)

Jury Trial: (check one) ☒ Yes ☐ No

DeARCY HALL, J.

BLOOM, M.J.

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

New York City Department of Education; Schools
Chancellor Meisha Porter, HR Director Charles
Peeples, Principal Doreen Conwell, IA Principal Asia
Burnett, Vivian Orlen, Manhattan Superintendent

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

COMPLAINT FOR A CIVIL CASE

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	Olga K. Davila
Street Address	211 Bloomsbury Drive
City and County	Morganville, Moumouth
State and Zip Code	NJ 07751
Telephone Number	(732) 617-6144
E-mail Address	olgadavila1957@gmail.com

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Pro Se 1 (Rev. 12/16) Complaint for a Civil Case

Defendant No. 1

Name	<u>New York City Department of Education</u>
Job or Title <i>(if known)</i>	<u>Employer</u>
Street Address	<u>52 Chambers Street</u>
City and County	<u>New York, New York</u>
State and Zip Code	<u>NY 10007</u>
Telephone Number	<u>(718) 935-4000</u>
E-mail Address <i>(if known)</i>	<u></u>

Defendant No. 2

Name	<u>Meisha Porter</u>
Job or Title <i>(if known)</i>	<u>NYC Schools Chancellor</u>
Street Address	<u>52 Chambers Street</u>
City and County	<u>New York, New York</u>
State and Zip Code	<u>NY 10007</u>
Telephone Number	<u>(718) 935-2000</u>
E-mail Address <i>(if known)</i>	<u>mross@schools.nyc.gov</u>

Defendant No. 3

Name	<u>Charles Peebles</u>
Job or Title <i>(if known)</i>	<u>Executive Director, Division of Human Resources</u>
Street Address	<u>52 Chambers Street</u>
City and County	<u>New York, New York</u>
State and Zip Code	<u>NY 10007</u>
Telephone Number	<u>(718) 935-4000</u>
E-mail Address <i>(if known)</i>	<u></u>

Defendant No. 4

Name	<u>Assia Burnett</u>
Job or Title <i>(if known)</i>	<u>Interim Acting Principal</u>
Street Address	<u>122 Amsterdam Avenue</u>
City and County	<u>New York, New York</u>
State and Zip Code	<u>NY 10023</u>
Telephone Number	<u>212-501-1201</u>
E-mail Address <i>(if known)</i>	<u>aburnett@schools.nyc.gov</u>

Pro Se 1 (Rev. 12/16) Complaint for a Civil Case

Defendant No. 1

Name Doreen Conwell

Job or Title *(if known)* Former School Principal

Street Address 122 Amsterdam Avenue

City and County New York, New York

State and Zip Code NY 10023

Telephone Number 212-501-1201

E-mail Address *(if known)* _____

Defendant No. 2

Name _____

Job or Title *(if known)* _____

Street Address _____

City and County _____

State and Zip Code _____

Telephone Number _____

E-mail Address *(if known)* _____

Defendant No. 3

Name _____

Job or Title *(if known)* _____

Street Address _____

City and County _____

State and Zip Code _____

Telephone Number _____

E-mail Address *(if known)* _____

Defendant No. 4

Name _____

Job or Title *(if known)* _____

Street Address _____

City and County _____

State and Zip Code _____

Telephone Number _____

E-mail Address *(if known)* _____

II. Basis for Jurisdiction

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal court jurisdiction? *(check all that apply)*



Federal question



Diversity of citizenship

Fill out the paragraphs in this section that apply to this case.

A. If the Basis for Jurisdiction Is a Federal Question

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

1. Pursuant to 42 USC §1983 I allege deprivation of liberty and property for job termination in violation of the Due Process Clause and the Equal Protection Clause protected by the Fourteenth Amendment;
2. Disparate treatment in the terms, conditions and privileges of my employment and retaliation in violation of the Fourteenth Amendment
3. Employment discrimination on the bases of age (65), national origin (Hispanic) and retaliation in violation of Title VII for opposing such discrimination

B. If the Basis for Jurisdiction Is Diversity of Citizenship**1. The Plaintiff(s)****a. If the plaintiff is an individual**

The plaintiff, *(name)* _____, is a citizen of the State of *(name)* _____.

b. If the plaintiff is a corporation

The plaintiff, *(name)* _____, is incorporated under the laws of the State of *(name)* _____, and has its principal place of business in the State of *(name)* _____.

(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)

2. The Defendant(s)**a. If the defendant is an individual**

The defendant, *(name)* _____, is a citizen of the State of *(name)* _____. Or is a citizen of *(foreign nation)* _____.

Pro Se 1 (Rev. 12/16) Complaint for a Civil Case

b. If the defendant is a corporation

The defendant, *(name)* _____, is incorporated under the laws of the State of *(name)* _____, and has its principal place of business in the State of *(name)* _____.

Or is incorporated under the laws of *(foreign nation)* _____, and has its principal place of business in *(name)* _____.

(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)

3. The Amount in Controversy

The amount in controversy—the amount the plaintiff claims the defendant owes or the amount at stake—is more than \$75,000, not counting interest and costs of court, because *(explain)*:

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

See attached

IV. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

I seek monetary damages and injunctive relief

V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 12/19/2022

Signature of Plaintiff

Printed Name of Plaintiff


Olga K. Davila

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Street Address

State and Zip Code

Telephone Number

E-mail Address

UNITED STATES DISTRICT COURT

for the

Eastern District of New York



____ Civil ____ Division

Olga K. Davila

Case No. _____

(to be filled in by the Clerk's Office)

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Local 2, United Federation of Teachers,
American Federation of Teacher AFL-CIO

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

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I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	Olga K. Davila
Street Address	211 Bloomsbury Drive
City and County	Morganville, Mounmouth
State and Zip Code	New Jersey 07751
Telephone Number	732-617-6144
E-mail Address	olgadavila1957@gmail.com

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Defendant No. 1

Name	<u>United Federation of Teachers</u>
Job or Title <i>(if known)</i>	<u></u>
Street Address	<u>52 Broadway</u>
City and County	<u>New York, New York</u>
State and Zip Code	<u>NY 10004</u>
Telephone Number	<u>212-331-6312</u>
E-mail Address <i>(if known)</i>	<u></u>

Defendant No. 2

Name	<u>Michael Mulgrew</u>
Job or Title <i>(if known)</i>	<u>UFT President</u>
Street Address	<u>52 Broadway</u>
City and County	<u>New York, New York</u>
State and Zip Code	<u>NY 10004</u>
Telephone Number	<u>212-331-6312</u>
E-mail Address <i>(if known)</i>	<u></u>

Defendant No. 3

Name	<u>LeRoy Barr</u>
Job or Title <i>(if known)</i>	<u>UFT Secretary</u>
Street Address	<u>52 Broadway</u>
City and County	<u>New York, New York</u>
State and Zip Code	<u>NY 10004</u>
Telephone Number	<u>212-331-6312</u>
E-mail Address <i>(if known)</i>	<u></u>

Defendant No. 4

Name	<u>David Campbell</u>
Job or Title <i>(if known)</i>	<u>UFT Grievance Department Director</u>
Street Address	<u>52 Broadway</u>
City and County	<u>New York, New York</u>
State and Zip Code	<u>NY 10004</u>
Telephone Number	<u>212-331-6312</u>
E-mail Address <i>(if known)</i>	<u></u>

II. Basis for Jurisdiction

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What is the basis for federal court jurisdiction? *(check all that apply)*



Federal question



Diversity of citizenship

Fill out the paragraphs in this section that apply to this case.

A. If the Basis for Jurisdiction Is a Federal Question

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

See attached copy

B. If the Basis for Jurisdiction Is Diversity of Citizenship**1. The Plaintiff(s)****a. If the plaintiff is an individual**

The plaintiff, *(name)* _____, is a citizen of the State of *(name)* _____.

b. If the plaintiff is a corporation

The plaintiff, *(name)* _____, is incorporated under the laws of the State of *(name)* _____, and has its principal place of business in the State of *(name)* _____.

(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)

2. The Defendant(s)**a. If the defendant is an individual**

The defendant, *(name)* _____, is a citizen of the State of *(name)* _____. Or is a citizen of *(foreign nation)* _____.

b. If the defendant is a corporation

The defendant, (name) _____, is incorporated under the laws of the State of (name) _____, and has its principal place of business in the State of (name) _____.
Or is incorporated under the laws of (foreign nation) _____, and has its principal place of business in (name) _____.

(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)

3. The Amount in Controversy

The amount in controversy—the amount the plaintiff claims the defendant owes or the amount at stake—is more than \$75,000, not counting interest and costs of court, because *(explain)*:

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Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

See attached copy

IV. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

See attached copy

V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 12/19/2022

Signature of Plaintiff

Printed Name of Plaintiff

Olga K. Davila
Olga K. Davila

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Street Address

State and Zip Code

Telephone Number

E-mail Address

December 19, 2022

STATEMENT OF FACT

1. Until 2021, I was a 36-year tenured teacher employed by the City of New York Department of Education (DOE). I was removed during the term of my employment on September 20, 2021, without the procedure clearly established under New York Education Law 3020-a.
2. Upon information and belief, Schools Chancellor Meisha Porter was the highest DOE official vested with the authority to terminate a tenured teacher's employment not Principal Burnett.
3. I assert a cause of action for the termination of my employment under 42 USC § 1983 alleging the deprivation of liberty and property in violation of the Due Process and the Equal Protection Clauses, protected by the Fourteenth Amendment;
4. I assert a second cause of action of disparate treatment in the terms, conditions and privileges of my employment and retaliation in violation of the Fourteenth Amendment, which entitles me to compensatory damages and equitable relief, back pay reinstatement as well as the release of the improper salary withholdings plus punitive damages, and such other relief as the Court may find just. Hence, I demand judgment against the defendants in the sum of Ten Million Dollars (\$10,000,000), plus interest.
5. I alleged that on July 28, 2020, as did my younger colleagues earlier, I applied with the DOE for reasonable accommodation due to underlying conditions and the risk posed by the pandemic to people her age.
6. On August 1, 2020, Conwell's reaction to my accommodation request was swift. None of my colleagues received such a treat. Conwell emailed me with the subject "Need to speak with you". She scheduled a virtual conference for August 3, 2020 where she told my wife that she was forced to remove her from her school since 9/6/1984, due to "budget cuts" but yet refused to schedule one for my wife after she filed a Step 1 grievance on September 7, 2020 disputing the premise of that very decision and many other decision after that through the CBA process, which suffered the same fait. Conwell was replaced on August 31, 2021. I believed that Conwell's order was a pretext. Her true intent was to circumvent the due process I was entitled to as a tenured teacher.
7. On August 12, 2020, the DOE finally notified me and Conwell regarding my accommodation approval.
8. On August 17, 2020, Conwell emailed me referencing the virtual conference and drew my attention to the attached DOE order asserting "[Y]ou have been placed in excess from our school for next year (2020-2021). This decision to place you in excess has been implemented in accordance with the New York City Department of Education's (NYC DOE) agreement with the United Federation of Teachers."
9. By September 7, 2020, the DOE, Charles Peeples, Executive Director Office of Field and Information Services at the Division of Human Resources (Director Peeples), and Principal Conwell were involved in a questionable transfer. I was being forced to to surrender my property interest without affording me the due process rights I was entitled to as a regular appointed tenured teacher and, covertly, turning me into an Absent Teacher Reserve (ATR) a week-to-week, school-to-school substitute teacher under less favorable terms, conditions and privileges of employment.
10. With the assistance of the chapter leader, a Step 1 grievance was filed with the principal's office asserting breach of the CBA, including articles 2 Fair Practices and 17B Excessing Rules 10, 10A & B. The relief sought was that the transfer order be rescinded and the record corrected and to greet her students on opening day, 9/16/20.

Under Rule 10,

"Teachers at all levels who have served 20 years or longer on regular appointment shall not be excessed..."

Under Rule 10A

"[T]hey will be placed in the school from which they were excessed as an Excessed Employee/ATR and will not be rotated (as defined in Rule 11(B)(6)(a). These individuals will have all the rights and privileges of other teachers on school's table of organization and may be used for coverages or other teacher related duties."

Under Rule 10B

It is expressly understood that the obligation in Rule 11(II) to send Excessed Employees/ATRs for consideration for placement or to cover vacancies in their license area shall not apply to teachers with twenty (20) years or more of seniority who are excessed and become ATRs/Excessed Employees assigned to the schools from which they are excessed. The evidence should have been sufficient for the officials to stop the disparate treatment. They deliberately and intentionally did the opposite.

11. The evidence show that the DOE and Charles Peeples, Executive Director Office of Field and Information Services at the Division of Human Resources (Director Peeples) permitted Principal Conwell to subject my wife on the basis of age (65), national origin (Hispanic) and retaliation for opposing the insidious adverse employment actions to retaliate for opposing disparate treatment in the terms, conditions and privilege of her employment, breach of contract i.e., articles 2 Fair Practices and 17B Excessing Rules 10, 10A & B, unreasonable seizing of 90% of her biweekly salary without probable cause to force my wife to comply with a demotion whereby her regular appointment tenured position was being turned, covertly, into an Absent Teacher Reserve (ATR) to a week-to-week, school to school substitute status with less favorable terms, conditions and privileges of her employment than the one prior to the transfer order to another school without fair notice, just cause, justification or an opportunity to be heard that went on for more than 12 months without any of several meritorious Step 1 grievances filed with the school principal, the first on 9/7/20 and the same number of Step 2 appeals, the first appeal filed on 9/17/20 but never adjudicated.

12/19/2022

Date


Olga K. Davila



olga davila <olgadavila1957@gmail.com>

SECOND NOTICE EMPLOYMENT STATUS REQUEST

olga davila <olgadavila1957@gmail.com>
To: mross@schools.nyc.gov

Sat, Sep 11, 2021 at 9:23 AM

September 6, 2021

Meisha Porter, Chancellor
NYC Department of Education
52 Chambers Street Room 320
New York, NY 10007-1222

Ph: 718.935.2000 / 212.374.6000 Ref: Pending Resolution from Excessing Letter 2020-21
Email: mross@schools.nyc.gov MKL HSLACJ Principal Doreen Conwell

Dear Chancellor Porter:

My name is Olga Davila. I am delighted to join you and millions of others in commemorating Labor Day 2021. I also observe today my 37th year anniversary as an educator when at age 23, secure a regular appointment position with the NYC Board of Education as a Foreign Language Teacher of Spanish and assigned to the school that bears the name of my hero civil rights leader Dr. Martin Luther King Jr. High School located at 122 Amsterdam Avenue, NYC, NY 10023, on September 6, 1984.

Since that memorable day, I made a commitment to learn as much as possible from veteran educators the "art of teaching" and to stay afloat in such a complex and at times cruel system to be able to grow professionally and collectively and to follow the tradition to assist those who come after me wanting to pick up from my experience and hard work and at some point, share their own wisdom with other educators.

However, that is not the purpose of this letter. It is to try to find out what is my current employment status after being subjected to unfair labor practices when I received an excessing order on August 17, 2020, from MLK H.S. for Law, Advocacy and Community Justice's Principal Doreen Conwell and upon information and belief, approved by Charles Peeples Executive Director, Office of Field & Information Services, Division of Human Resources.

I believe HR Director Charles Peeples and Principal Conwell, among other DOE officials used unequal terms, conditions, and privileges of employment to reach the August 17th decision and order and certifying, "I regret to inform you that you have been placed in excess from our school for the next year (2020-2021). This decision to place you in excess has been implemented in accordance with the New York City Department of Education's (NYC DOE) agreement with the United Federation of Teachers."

The order was based on an unlawful demotion by more than 16 years from my 36 years seniority, retention, and property interest rights to be able to reach

the less than 20 years threshold to go forward with the illegal transfer inconsistent with the CBA in effect from February 14, 2019 through September 13, 2022, and changing my regular appointment teaching position, secured since June 25, 1984, and turning me into a week-to-week Absent Teacher Reserve substitute teacher in the middle of the COVID-19 pandemic without the required due process or the equal protection under the law and the city, state, federal employment, labor and discrimination laws, because of my age 64, retaliation and national origin (Hispanic).

The Step 1 Grievance contends that the CBA provisions, including but not limited to Articles 2 Fair Practices and 17B Excessing Rules 10, 10A & B were violated. Under Rule 10,

"Teachers at all levels who have served 20 years or longer on regular appointment shall not be excessed..

Rule 10A they will be placed in the school from which they were excessed [legally without a demotion] as an Excessed Employee/ATR and will not be rotated (as defined in Rule 11(B)(6)(a)). These individuals will have all the rights and privileges of other teachers on school's table of organization and may be used for coverages or other teacher related duties." [Emphasis added]

The record shows that HR Director Peebles and the principal gave a blind eye to those rules and deliberately and intentionally treated me differently than others in similar situations when I clocked my attendance on September 8, 2020, as required by Rule 10 and 10A. In retaliation, I was blocked from Microsoft TEAMS, Google Classroom knowingly to be illegal and when they noticed that I was preparing lesson plans for my future students they blocked Google Doc as well. Clearly keeping me away from my job duties and to make it impossible for me to make a living and provide for my family, pay my bills etc., despite of being willing and able to perform my duties effectively, responsibly and with distinction as in the past 36 years, although in different capacities while waiting for my Step 2 appeals to be adjudicated as per the CBA.

After being paid for services rendered in the month of September, DOE officials decided to withhold 90% of my wages for 9 months in the amount of or about \$55,000 to force me to accept the unlawful demotion and the transfer from my school or to accept becoming a week-to-week substitute teacher as an Absent Teacher Reserve during the pandemic or to be forced to either quit, resign, or take an involuntary retirement or transfer. Cruel and unacceptable.

The remedy sought was simply the rescinding of the order to be transferred out of my school of 36 years, the correction of the record and to allow me to greet my new students on the first day of school on September 13, 2020.

Unfortunately, that became just a beautiful thought but never crystallized, instead, it has been an unprecedented 13 months and difficult to forget.

It is worth noting that I have been kept all along under the belief by Union officials that "[T]he grievance process is suspended. The UFT is in discussion with the Board about opening the process. Your rights to an excessing grievance with regard to timeliness is[sic] protected since the process has been suspended, so it would not be deemed late."

Respectfully, what is my current employment status and when are you, as the NYC Schools Chancellor or your designee going to lift the grievance process

suspension to adjudicate all my Step 2 Appeals properly and timely served with the Union starting with the September 17, 2020, appeal.

Thank you for your attention to this urgent matter and I eagerly await your reply before September 9, 2021. I could be reached at olgadavila1957@gmail.com or at 732.617.6144

/S/Olga Davila



olga davila <olgadavila1957@gmail.com>

Principal Asia Burnett MLK HSLACJ

olga davila <olgadavila1957@gmail.com>
To: mross@schools.nyc.gov

Fri, Oct 8, 2021 at 5:21 PM

October 8, 2021

Meisha Porter, Chancellor
NYC Department of Education
52 Chambers Street Room 320
New York, NY 10007-1222
Ph: 718.935.2000 / 212.374.6000
Email: mross@schools.nyc.gov

Ref: Pending Resolution from Excessing Letter 2020-21

MKL HSLACJ Principal Doreen Conwell

"Injustice anywhere is a threat to justice everywhere."

These words ... are a reminder that we all have a responsibility to
take a stand when we witness injustice."

Dear Chancellor Porter:

On September 6, 2021, I reported to you via email and USPS Certified Mail Return Receipt (attachment 1) about the unfair labor practices I was being subjected to by former principal Doreen Conwell at school 03M492, starting on March 20, 2020, after the COVID-19 pandemic hit our state and the NYC school system shut down in person learning and moved to virtual learning. I indicated that while engaged in protected activity, under the applicable civil rights laws, noted by disparate treatment, excessing, demotion, transfer, unlawful seizing about 90% of my wages from October 2020 to the present, in the amount about \$65,000, deactivation of my DOE ID to record my official daily attendance, the excessing letter was issued. That was done, simply because I did not agree to be forced to retire or transfer from my school without probable cause.

Ms. Conwell's adverse employment actions, set forth in her August 17, 2020, excessing letter (attachment 2), were supported and approved, including but not limited to, directly or indirectly, upon information and belief, by Charles Peeples, Executive Director, Office of Field & Information Services, New York City Department of Education Division of Human Resources. The order was carried out under unequal terms, conditions, and privileges of employment because of my age, retaliation, and national origin (Hispanic) without a concern to my right to due process or my right to equal protection under the law.

Each violation was followed by a Step 1 grievance properly and timely filed with Ms. Conwell's office, starting with the September 7, 2020, (attachment 3), challenging the excessing and transfer out of my school of 36 years performing

my duties effectively, responsibly and with distinction, without a cause, justification, fair notice, or an opportunity to be heard. To add insult to injury, without a single provision, as required under the CBA in support of the action taken.

You would recognize that Ms. Conwell had the lawful duty and ethical responsibility to rescind the order after receiving the Step 1 grievance demonstrating that, as per the CBA Excessing Rules 10, 10A & B, her August 17, 2020, order was an impermissible and intentional discriminatory act under applicable civil rights laws thus every action and decision thereafter, as the legal metaphor goes the, "Fruit of the poisonous tree", would be considered null and void.

The September 6th letter was intended, not only to inform you about what had happened to me, but also to prevent something similar from happening again to me or any other colleague, and the culprit to go free without accountability. More importantly, to get your assistance through the CBA process in resolving the pending resolution of the Step 2 appeals filed with the UFT starting with the September 17, 2020, and still waiting for their adjudication.

Almost five weeks have gone by, and you decided, sadly, not to reply at all about my concerns. As you recall, I asked two fair questions after 13 months waiting for the adjudication of the Step 2 appeals, first, what was my current employment status? Based on the record, Ms. Conwell did not rescind the August 17, 2020, order, if she had, I wanted to know from you or designee, in writing, that the terms, conditions, and privileges of employment remain the same prior to Ms. Conwell adverse employment actions. If that was not possible, to assure me that the adjudication of all my appeals would be scheduled soon thereafter.

More importantly, that whoever was going to be Ms. Conwell's replacement that he or she be able to have the proper and full record showing that I am still the regular appointed Foreign Language teacher of Spanish with the seniority, tenured and property interest rights I attained by merit during 36 years of service to the school community and NOT as an Absent Teacher Reserve (ATR) week-to-week substitute which it was what Ms. Conwell and others wanted me to be. NEVER. Second, when are you, as the NYC Schools Chancellor or your designee, going to lift the grievance process suspension to adjudicate all my Step 2 Appeals properly and timely served with the Union starting with the September 17, 2020, appeal? No answers have been provided.

On September 9, 2021, the school year 2021-22 began. On September 20, 2021, I received a letter from Acting Principal Asia Burnett dated September 17, 2021, (Attachment 4), based on her statements, she appears to be acting like Ms. Conwell. That is very concerning. Without basis, Ms. Burnett wrote in her discharged letter, "You have been absent without notice for significantly more than 20 consecutive school days and you are deemed to have resigned from your employment with the New York City Department of Education as of today, Friday, September 17, 2021. Therefore, you are no longer to report to any Department office or school building." In fact, Principal Burnett's letter is in violation of the terms, conditions, and privileges of employment under the CBA, and in

violation of my civil and constitutional rights under the State of New York and the United States and federal laws.

In closing, as you are now familiar with the adverse employment actions taken against me by the principals and based on the evidence provided and the ultimate authority you possess as Schools Chancellor, I request,

1. The principals' actions are rescinded, and the record be corrected.
2. Ms. Conwell's seizing of my wages from October 2020 to the present be release immediately by months seized not all in a lump sum and,
3. Reinstatement.

Thank you for your attention to this matter and I eagerly await your reply.
"Justice Delayed is Justice Denied".

Sincerely,

Olga Davila

----- Forwarded message -----

From: **olga davila** <olgadavila1957@gmail.com>

Date: Mon, Sep 20, 2021 at 8:01 PM

Subject: Principal Asia Burnett MLK HSLACJ

To: olga davila <olgadavila1957@gmail.com>

6 attachments



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Davila Excess letter Aug 2020.pdf
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9-6-2021 LETTER TO NYC SCHOOLS CHANCELLOR EMPLOYMENT STATUS REQUEST .docx
21K



UFT WINNIE THOMPSON SPECIAL REP.docx
19K



9-6-2021 LETTER TO NYC SCHOOLS CHANCELLOR EMPLOYMENT STATUS REQUEST .docx
21K



olga davila <olgadavila1957@gmail.com>

Fwd: Attendance: SY 2021-22 (03M492)

olga davila <olgadavila1957@gmail.com>
To: mross@schools.nyc.gov

Mon, Sep 20, 2021 at 8:17 AM

September 20, 2021

Meisha Porter, Schools Chancellor
NYC Department of Education
52 Chambers Street Room 320
New York, NY 10007-1222
Ph: 718.935.2000
Email: mross@schools.nyc.gov

Ref: Pending Resolution from Excessing Letter 2020-21
MKL HSLACJ Principal Doreen Conwell

Dear Chancellor Porter:

I am in receipt of an email from Acting Principal Asia Burnett at MLK H.S. for Law, Advocacy & Community Justice (HSLACJ). I do not know what the principal is implying with "our records indicate". As I stated in my September 6, 2021 sent you your official email address and by USPS Certified Mail, without a response as the NYC Schools Chancellor to advise me, as I requested in the aforementioned letter, what is my current employment status and when are the NYC DOE and the UFT going to agree to adjudicate all Step 2 appeals properly and timely filed starting with the September 17, 2020. I am forwarding the email message to your office to determine how to inform Principal Burnett that 12 month is still not enough time for the adjudication of the appeals regarding adverse employment actions I had and continue to endure in violation of my right to be heard.

As noted in the September 6th letter, I have been told since the Step 2 Appeal was filed, "[T]he grievance process is suspended. The UFT is in discussion with the Board about opening the process. Your rights to an excessing grievance with regard to timeliness is[sic] protected since the process has been suspended, so it would not be deemed late." It is time to lift the appeal process for me, Olga Davila, to be heard.

On September 6, 2021, I sent a letter to your official email address and made you aware about disturbing unfair labor practices, discriminatory in nature, I had been subjected to because of my age, national origin (Hispanic), retaliation, harassment, disparate treatment, demotion, and ultimately transfer simply because I did not want to retire.

My situation remains the same and need your leadership action to resolve the adverse employment actions arising from the August 17, 2020's Principal Doreen Conwell at HSLACJ that I was being placed in excess from my teaching program I received on June 24, 2020, and by an unlawful demotion and transfer out of my school location after 36 years of unblemished service to the school community. The principal, upon information and belief and other high DOE officials, including but not limited to Charles Peeples Executive Director, Office of Field & Information Services, Division of Human Resources and the Budget Officer at the NYC Department of Education have approved and supported the adverse employment actions to be treated less favorably than a second-class citizen by subjecting me to unequal terms, conditions, and privileges of employment.

A Step 1 grievance dated September 7, 2020, was properly and timely filed by the school chapter leader and a Step 2 Appeal dated September 17, 2020, followed because the principal decided to ignore the significance of the unfair labor practices she had been subjecting me to for a long time. Despite the UFT acknowledgement of the merits of the Step 2 Appeal and the confirmation that the DOE had violated the CBA Article 17B Excessing Rules 10, 10A & B, the appeal was not adjudicated for the alleged grievance suspension.

Meanwhile, DOE officials seized about 90% of my wages unlawfully from October 2020 through August 31, 2021, in the amount of or about \$55,000 because I did not agree to accept the adverse employment actions that have put me in the difficult financial and professional situation. I request again that the seized wages be released immediately, each wage withholding separately with the accrued interests and that the questions be answered immediately to resolve the unfair labor practices.

Sincerely,

Olga Davila

----- Forwarded message -----

From: **Davila Olga** <ODavila@schools.nyc.gov>

Date: Tue, Sep 14, 2021 at 4:15 PM

Subject: Fwd: Attendance: SY 2021-22 (03M492)

To: olgadavila1957@gmail.com <olgadavila1957@gmail.com>

[Quoted text hidden]



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Eastern District of
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Pro Se Office



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